

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

John Palmer,

Plaintiff,

*versus*

David Cunningham,

Defendant.

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MISCELLANEOUS H-11-382

## Opinion on Dismissal

John Palmer is suing David Cunningham for legal malpractice. On July 12, 2010, Palmer pleaded guilty to two counts of assault with a deadly weapon against a federal agent and to two counts of threatening a federal agent. Palmer unsuccessfully tried to withdraw his guilty pleas on the two counts of assault.

Cunningham's referring to Palmer's case as "our case" was not a lie. Palmer's claim for ineffective assistance of counsel rests on an "exculpatory 911 transcript." Cunningham tried to get a transcript of a related call to 911 and a dash-mounted videocamera tape from Palmer's arrest on May 1, 2007. They apparently didn't exist.

The record shows that Cunningham moved for a competency evaluation to protect Palmer should he not have been able to help prepare his defense.

Cunningham did not suborn perjury or agree that the transcript was falsified. The only testimony used to convict Palmer was his own. There was no other testimony to be perjured. Cunningham did not lie at Palmer's plea hearing or commit fraud.

Palmer has no claim for a right to a speedy trial against Cunningham. Cunningham's motions for continuance were for Palmer's benefit.

Even under the generous allowance for a pleading prepared without the assistance of a lawyer, the claims by John Palmer are wholly deficient as legal claims. Even if Palmer's facts are

true, there were no procedural defects that would have injured him, since he pleaded guilty under oath.

Palmer's claims will be dismissed.

Signed September 12, 2011, at Houston, Texas.

A handwritten signature in black ink, appearing to read 'L. N. Hughes', written over a horizontal line.

Lynn N. Hughes  
United States District Judge